

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

Edward K. Li, in individual and
representative capacity as trustee of
The Li Family Trust dated March 10,
1988;
Debra Li, in individual and
representative capacity as trustee of
The Li Family Trust dated March 10,
1988;
Jianwei Shou; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Edward K. Li, in individual and representative capacity as trustee of The Li Family Trust dated March 10, 1988; Debra Li, in individual and representative capacity as trustee of The Li Family Trust dated March 10, 1988; Jianwei Shou; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual

1 dexterity impairments. He uses a wheelchair for mobility and has a specially
2 equipped van.

3 2. Defendants Edward K. Li and Debra Li, in individual and representative
4 capacity as trustee of The Li Family Trust dated March 10, 1988, owned the
5 real property located at or about 520 S. Murphy Avenue, Sunnyvale,
6 California, between June 2018 and October 2018.

7 3. Defendants Edward K. Li and Debra Li, in individual and representative
8 capacity as trustee of The Li Family Trust dated March 10, 1988, own the real
9 property located at or about 520 S. Murphy Avenue, Sunnyvale, California,
10 currently.

11 4. Defendant Jianwei Shou owned Family Healthcare Center located at or
12 about 520 S. Murphy Avenue, Sunnyvale, California, between June 2018 and
13 October 2018.

14 5. Defendant Jianwei Shou owns Family Healthcare Center located at or
15 about 520 S. Murphy Avenue, Sunnyvale, California, currently.

16 6. Plaintiff does not know the true names of Defendants, their business
17 capacities, their ownership connection to the property and business, or their
18 relative responsibilities in causing the access violations herein complained of,
19 and alleges a joint venture and common enterprise by all such Defendants.
20 Plaintiff is informed and believes that each of the Defendants herein,
21 including Does 1 through 10, inclusive, is responsible in some capacity for the
22 events herein alleged, or is a necessary party for obtaining appropriate relief.
23 Plaintiff will seek leave to amend when the true names, capacities,
24 connections, and responsibilities of the Defendants and Does 1 through 10,
25 inclusive, are ascertained.

26
27 **JURISDICTION & VENUE:**

28 7. The Court has subject matter jurisdiction over the action pursuant to 28

1 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
2 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

3 8. Pursuant to supplemental jurisdiction, an attendant and related cause
4 of action, arising from the same nucleus of operative facts and arising out of
5 the same transactions, is also brought under California's Unruh Civil Rights
6 Act, which act expressly incorporates the Americans with Disabilities Act.

7 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
8 founded on the fact that the real property which is the subject of this action is
9 located in this district and that Plaintiff's cause of action arose in this district.

10
11 **FACTUAL ALLEGATIONS:**

12 10. Plaintiff went to the Family Healthcare Center in June 2018 (twice),
13 September 2018 and October 2018 with the intention to avail himself of its
14 services, motivated in part to determine if the defendants comply with the
15 disability access laws.

16 11. The Family Healthcare Center is a facility open to the public, a place of
17 public accommodation, and a business establishment.

18 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
19 to provide accessible paths of travel leading into Family Healthcare Center in
20 conformance with the ADA Standards as it relates to wheelchair users like the
21 plaintiff.

22 13. On information and belief the defendants currently fail to provide
23 accessible paths of travel leading into Family Healthcare Center.

24 14. These barriers relate to and impact the plaintiff's disability. Plaintiff
25 personally encountered these barriers.

26 15. By failing to provide accessible facilities, the defendants denied the
27 plaintiff full and equal access.

28 16. The lack of accessible facilities created difficulty and discomfort for the

1 Plaintiff.

2 17. Even though the plaintiff did not confront the following barriers, on
3 information and belief the defendants currently fail to provide accessible sales
4 counters and restrooms. Plaintiff seeks to have these barriers removed as they
5 relate to and impact his disability.

6 18. The defendants have failed to maintain in working and useable
7 conditions those features required to provide ready access to persons with
8 disabilities.

9 19. The barriers identified above are easily removed without much
10 difficulty or expense. They are the types of barriers identified by the
11 Department of Justice as presumably readily achievable to remove and, in fact,
12 these barriers are readily achievable to remove. Moreover, there are numerous
13 alternative accommodations that could be made to provide a greater level of
14 access if complete removal were not achievable.

15 20. Plaintiff will return to Family Healthcare Center to avail himself of its
16 services and to determine compliance with the disability access laws once it is
17 represented to him that Family Healthcare Center and its facilities are
18 accessible. Plaintiff is currently deterred from doing so because of his
19 knowledge of the existing barriers and his uncertainty about the existence of
20 yet other barriers on the site. If the barriers are not removed, the plaintiff will
21 face unlawful and discriminatory barriers again.

22 21. Given the obvious and blatant nature of the barriers and violations
23 alleged herein, the plaintiff alleges, on information and belief, that there are
24 other violations and barriers on the site that relate to his disability. Plaintiff will
25 amend the complaint, to provide proper notice regarding the scope of this
26 lawsuit, once he conducts a site inspection. However, please be on notice that
27 the plaintiff seeks to have all barriers related to his disability remedied. See
28 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff

encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

22. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

23. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and

1 the bathrooms, telephones, and drinking fountains serving the
 2 altered area, are readily accessible to and usable by individuals
 3 with disabilities. 42 U.S.C. § 12183(a)(2).

4 24. When a business provides paths of travel, it must provide accessible
 5 paths of travel.

6 25. Here, accessible paths of travel have not been provided.

7 26. When a business provides facilities such as sales or transaction counters,
 8 it must provide accessible sales or transaction counters.

9 27. On information and belief, accessible sales or transaction counters have
 10 not been provided.

11 28. When a business provides facilities such as restrooms, it must provide
 12 accessible restrooms.

13 29. On information and belief, accessible restrooms have not been
 14 provided.

15 30. The Safe Harbor provisions of the 2010 Standards are not applicable
 16 here because the conditions challenged in this lawsuit do not comply with the
 17 1991 Standards.

18 31. A public accommodation must maintain in operable working condition
 19 those features of its facilities and equipment that are required to be readily
 20 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

21 32. Here, the failure to ensure that the accessible facilities were available
 22 and ready to be used by the plaintiff is a violation of the law.

23
 24 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 25 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 26 Code § 51-53.)

27 33. Plaintiff repleads and incorporates by reference, as if fully set forth
 28 again herein, the allegations contained in all prior paragraphs of this

1 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
2 that persons with disabilities are entitled to full and equal accommodations,
3 advantages, facilities, privileges, or services in all business establishment of
4 every kind whatsoever within the jurisdiction of the State of California. Cal.
5 Civ. Code §51(b).

6 34. The Unruh Act provides that a violation of the ADA is a violation of the
7 Unruh Act. Cal. Civ. Code, § 51(f).

8 35. Defendants’ acts and omissions, as herein alleged, have violated the
9 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
10 rights to full and equal use of the accommodations, advantages, facilities,
11 privileges, or services offered.

12 36. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
13 discomfort or embarrassment for the plaintiff, the defendants are also each
14 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
15 (c).)

16 37. Although the plaintiff was markedly frustrated by facing discriminatory
17 barriers, even manifesting itself with minor and fleeting physical symptoms,
18 the plaintiff does not value this very modest physical personal injury greater
19 than the amount of the statutory damages.

20
21 **PRAYER:**

22 Wherefore, Plaintiff prays that this Court award damages and provide
23 relief as follows:

24 1. For injunctive relief, compelling Defendants to comply with the
25 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
26 plaintiff is not invoking section 55 of the California Civil Code and is not
27 seeking injunctive relief under the Disabled Persons Act at all.
28

1 2. Damages under the Unruh Civil Rights Act, which provides for actual
2 damages and a statutory minimum of \$4,000 for each offense.

3 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

5
6 Dated: December 5, 2019

CENTER FOR DISABILITY ACCESS

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8 By:



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10 _____
11 Amanda Seabock, Esq.
12 Attorney for plaintiff
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